

**WEST HAYMARKET JOINT PUBLIC AGENCY (JPA)**  
**Board Meeting**  
**September 23, 2014**

Meeting Began At: 3:03 P.M.

Meeting Ended At: 3:37 P.M.

Members Present: Chris Beutler, Tim Clare, Doug Emery

**Item 1 -- Introductions and Notice of Open Meetings Law Posted by Door**

Chair Beutler opened the meeting with an introduction of the Board members. He advised that the open meetings law is in effect as posted at the back of the room.

**Item 2 -- Public Comment and Time Limit Notification**

Public comment is welcome. Beutler stated that individuals from the audience who wish to would get a total of five minutes to speak on specific items listed on today's agenda. Those testifying should identify themselves for the official record and sign in.

**Item 3 -- Approval of the minutes from the JPA meeting held June 18, 2014**

Beutler asked for corrections or changes to the minutes of the June 18, 2014 JPA meeting. Emery moved approval of the minutes as presented. Clare seconded the motion. Motion carried 3-0.

**Item 4 -- Approval of June, July, and August 2014 Payment Registers**

Steve Hubka, City Finance Director, presented the 2014 payment registers for June, July, and August. Each item is sorted as to whether the item is out of the Operating Budget, the Phase I Budget, or the Phase II Budget.

The June operating budget shows interest payments on the debt service for approximately \$7 million, UNL rent settlement for loge box revenues, and the sales tax payment to settle the issue with the Department of Revenue. Those items total \$8,579,000. There was minimal out of Phase I. Phase II payments were \$2,847,000 for parking garages. For all three June budgets totaled \$11.7 million.

In July there was a transfer of funds for the operating part of the arena for \$465,000 from the operating budget. Again, there was minimal out of Phase I and Phase II payments were for parking garage construction.

There was nothing unusual out of the operating budget for August. Phase I continued to run about \$300,000 and Phase II continued parking garage construction payouts.

Hubka reported that signatures are being obtained, and everything is on budget.

Beutler asked if there were requests for payments that were particularly unusual, legally dubious, or involved questions of interpretation. Hubka responded that they were receiving invoices during the time period from CSL Legends, but it was an agreed upon situation. Otherwise, nothing notable.

Beutler invited public comment. Being none, Clare moved approval of the payment registers. Emery seconded the motion. Motion carried 3-0.

#### **Item 5 -- Review of June, July, and August 2014 Expenditure Reports**

Hubka presented the June, July, and August Expenditure Reports reflecting the activity shown in the payment registers. Later on the agenda there will be amendments for Phase I and Phase II and some line items will change if those are approved. This does reflect an extra payment to UNL for premium seating arrangements as there were two payments this fiscal year. Moving forward there will be only one payment per year. Responding to Emery, Hubka confirmed that this was just a timing issue as the first and second payments were in the first year. There was no public comment and no action was required.

#### **Item 6 – WH 14-24 Resolution to approve the grant of an easement for underground utility lines, underground utility facilities, and/or at-grade equipment to Lincoln Electric System at the former Alter Metal site located in a portion of Outlot C, West Haymarket Addition.**

Adam Hoebelheinrich, P.C. Sports, introduced this item explaining it was for a slight addition to two easements currently held by Lincoln Electric System (LES) south of “N” Street on the south Alter property. LES has some interest in installing a loop to their power grid in the next six to eight months to provide future loads to the area. LES is willing to do a bore to stay below the area where environmental remediation will need done on the soil next year. To do that the bore has to come back up to meet their other lines, so the best route includes this sliver of an easement. It is an area close to the railroad tracks that is basically unbuildable. Emery asked if the remediation is something that has been known and planned for, which Hoebelheinrich confirmed is the case. They are confident the bore will stay well below those levels.

Beutler invited public comment. Being none, Emery moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

#### **Item 7 – WH 14-25 Resolution to approve a Letter Agreement between the West Haymarket Joint Public Agency and Guardian Industries Corp. regarding replacement of four broken glass units at Pinnacle Bank Arena and any future claims if additional breakage occurs.**

Hoebelheinrich related that this resolution is for an agreement with Guardian, which is the supplier of the arena glass. There were four to six glass panels that broke and there were found to be inclusions, specs of dust, etc. Inclusions in glass are normal during the glass process, but in order to maintain the relationships, Guardian has agreed to extend the warranty on the glass. It will now go from when it was manufactured in September 2012 to 2018. If there are any breakages due to inclusions, they will replace the glass free of charge. As part of the agreement, the JPA will waive any claims against Guardian associated with the broken glass. This is fairly standard in the glass industry. Hoebelheinrich confirmed for Clare that these panes were the glass panes broken when the arena opened and there was found to be no vandalism involved. Emery asked if there was another possible claim other than replacement of the glass. Hoebelheinrich agreed that would be the claim and stated it was a good deal for the JPA with Guardian extending the warranty.

Being no public comment, Emery moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

**Item 8 – WH 14-26 Resolution to approve a Right-of-Entry Agreement between the West Haymarket Joint Public Agency and Argent, Inc. for access to Lot 1, Block 8, West Haymarket Addition (Lumberworks).**

Tim Sieh, City Attorney's Office, introduced the resolution. This right-of-entry agreement allows Argent to go onsite to do some soil testing and surveying in order to finalize plans for the project. They were chosen as the developer for that site.

Beutler asked for public comment. Being none, Clare moved approval of the resolution. Emery seconded the motion. Motion carried 3-0.

**Item 9 – WH 14-27 Resolution approving the adoption of the 2014-2015 JPA Operating Budget.**

Hubka presented the JPA Operating Budget for the year that began September 1, 2014 and runs through August 31, 2015. There were some changes in the budget increasing the overall amount from \$21.7 million to \$25.6 million.

Some of the larger increases included \$1,521,329 of additional commissions. That was partially funded by a re-appropriation of amounts in the 2013-2014 Budget. An amount of \$919,000 was still available that was previously budgeted. There was \$880,000 of additional parking management expenses due to there being two new garages. There was \$1,096,000 in additional debt service, primarily because we are starting to pay principal on the issued Phase II bonds. Another \$600,000 was budgeted for District Energy Corp. payments; based on the fact that there is more development with more buildings to serve, plus having a year of history of actual costs.

Within this resolution, there is also a re-appropriation of \$35,000 budgeted in 2013-2014 for cleanup of the JPA property by the City Mission. This was just recently completed.

Clare wondered if Hubka saw surprises from what he anticipated. Hubka responded that there are things that come up, such as the miscellaneous cleanup. Obviously, the debt service is the lion's share of the budget and they now have that scheduled out for the next 30 years, which should reflect stability for largest part of the budget. Principle payments on the \$300 million in bonds begin in 2020-2021. That will reflect a huge increase. Clare asked where we are in relationship to Occupation Tax and future anticipated amounts. Hubka relayed that we took in \$14,361,000 this year. That is up \$1.1 million over prior year. In looking at what was projected, it would have taken us until 2020 to take in that amount of money, so that is going exceptionally well. For calendar year to date, the collections are up 8% over prior year. So, doing future projections there is a base that is growing rapidly. Hubka does not have the exact breakdown, but the majority is from bars and restaurants with about 600 taxpayers. They are under budget because commissions not previously paid are being moved to the upcoming budget for 2014-2015. Once processes are on the same fiscal year with UNL, the payments will go to one per year instead of the two shown this year.

Responding to Beutler's inquiry, Hubka affirmed that he also keeps track of non-payment of occupation taxes. The rate of non-payments has improved and leveled off. Every month he signs 10-15 assessment letters for non-payment and they are repeat businesses many times. His area has tightened up their processes such that they do not let those businesses get more than a month behind before sending a

letter. They have a few payment plans. In summary, compliance is better and Finance has an improved tracking process.

Being no public comment, Clare moved approval of the resolution. Emery seconded the motion. Motion carried 3-0.

**Item 10 – WH 14-28 Resolution approving the September 23, 2014 Proposed Program Budget - Phase I and September 23, 2014 Proposed Program Budget - Phase II.**

Hubka explained that this resolution is for the Program Budget that is an ongoing budget that has been amended every eight to ten months over the course of the project. The frequency should decline as we are moving to the end of the capital project. In the proposed changes, they are moving amounts into specifically budgeted line items, including the Breslow Ice Center for \$1,927,000. This includes the \$2 million previously shown in Contingency. This is not reflected as \$2 million or greater since there is some offsetting savings in that line item. In addition, they are moving amounts to Contingency as dollars remain in line items for completed parking and road projects. This is the same for the site purchase and bond-related costs. The Contingency budget is actually increasing by \$1,308,126, leaving a total in what is identified as Contingency of \$10,348,000. There is also \$2.2 million of Contingency in with the arena/garage construction line item. Therefore, overall, there is \$12.5 million of Contingency remaining.

On Phase II, for Parking Garages 2 and 3, monies were moved from Contingency to parking for streetscape work. There is \$421,984 left in Contingency for parking garages. The uses and need for those funds are being reduced as garages are now open.

Beutler invited public comment. Being none, Clare moved approval of the resolution. Emery seconded the motion. Motion carried 3-0.

**Item 11 – WH 14-29 Report of Settlement Agreement under Neb. Rev. Stat. § 84-713 (Non-Tort Claims) with Legends Sales and Marketing, LLC and Resolution authorizing settlement.**

Jocelyn Golden, City Attorney's Office, reported this proposed settlement agreement with Legends Sales and Marketing, LLC was in response to a lawsuit filed against the JPA at the end of 2013. The lawsuit relates to a dispute over commissions due to Legends because of a prepayment by Pinnacle Bank for the arena naming rights. Legends alleged that the JPA owed them an additional \$596,051 in commissions per the naming rights contract. They conducted discovery in the lawsuit and engaged in settlement negotiations. The settlement asks the JPA to pay an additional \$469,052 in commissions to Legends. This settlement agreement will also ratify a commission reduction of \$100,000 negotiated previously with Legends.

Clare asked for clarification on the lawsuit. Golden confirmed that Pinnacle elected to prepay for the naming rights instead of doing over time in order to get a 4% reduction. The dispute simply arose out of contract language on whether Legends was due commissions based on the total amount negotiated or the prepayment amount. Responding to Emery, Hubka explained that the money is included in the just approved operating budget.

Being no public comment, Emery moved approval of the resolution. Clare seconded the motion. Motion carried 3-0.

### **Follow-up Item**

Mike Miller, Lancaster County Breastfeeding Coalition, was before the Board with a follow-up inquiry. Two meetings ago, he was asked to make an appointment with Tom Lorenz to seek space in the arena for breastfeeding and lactation pumping. They, and a manager from Bryan LGH who is also a member of the Coalition, met and found space. There are several opportunities or solutions available. He originally went to the City Council because he does not believe the arena construction was mother and baby friendly. He was sent to the JPA, and believes they are at the point where authority and budget is needed from the JPA Board to move forward.

Beutler thanked Miller for the reminder and apologized for the delay. There needs to be a staff meeting on the issue, so they will need additional time for discussion. Miller can follow up with Jon Carlson in the Mayor's Office, but Beutler asked again that he do so after giving them time for discussion. In response to Miller, Clare stated that he thinks it warrants discussion and he could not confirm at this time if he believes improvement is needed. Tom Lorenz, SMG, agreed more discussion is needed.

### **Item 12 -- Set Next Meeting Date**

The next meeting is scheduled for Thursday, October 9, 2014 at 3:00 p.m. in the County-City Building City Council Chambers Room 112. Board members discussed delaying or cancelling the October meeting. Chris Connolly, City Attorney's Office, did not see a problem delaying for a week or so, but there may be items that need to come before the board prior to November. Beutler will have staff look at schedules to adjust that meeting date.

### **Item 13 -- Motion to Adjourn**

Being no further business, Emery moved adjournment of the meeting. Clare seconded the motion. Motion carried 3-0. The meeting adjourned at 3:37 p.m.

**Prepared by: Pam Gaden, Public Works & Utilities**